

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRAVELERS CASUALTY AND SURETY COMPANY
as Administrator for RELIANCE INSURANCE
COMPANY,

Plaintiff,

-against-

DORMITORY AUTHORITY - STATE OF NEW YORK,
TDX CONSTRUCTION CORP. and KOHN PEDERSEN
FOX ASSOCIATES, P.C.,

Defendants.
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07 Civ. 6915 (DLC)
ECF CASE

**DEFENDANT KOHN
PEDERSEN FOX
ASSOCIATES, P.C.'S
REPLY TO
COUNTERCLAIM OF
THIRD-PARTY
DEFENDANT
COSENTINI
ASSOCIATES, INC.**

Electronically Filed

DORMITORY AUTHORITY OF THE STATE OF NEW
YORK and TDX CONSTRUCTION CORP.,

Third-Party Plaintiffs,

-against-

TRATAROS CONSTRUCTION, INC.,

Third-Party Defendant.
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TRATAROS CONSTRUCTION, INC. and TRAVELERS
CASUALTY AND SURETY COMPANY,

Fourth-Party Plaintiffs,

-against-

CAROLINA CASUALTY INSURANCE COMPANY, *et*
al.,

Fourth-Party Defendants.
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KOHN PEDERSEN FOX ASSOCIATES, P.C.,	:
	:
Third-Party Plaintiff,	:
	:
-against-	:
	:
WEIDLINGER ASSOCIATES CONSULTING	:
ENGINEERS, P.C., CASTRO-BLANCO PISCIONERI	:
AND ASSOCIATES, ARCHITECTS, P.C.,	:
ARQUITECTONICA NEW YORK, P.C., COSENTINI	:
ASSOCIATES, INC., CERMAK, PETERKA PETERSEN,	:
INC. JORDAN PANEL SYSTEMS CORP., TRATAROS	:
CONSTRUCTION, INC. and LBL SKYSYSTEMS	:
(U.S.A.), INC.,	:
	:
Third-Party Defendants.	:
-----	X

Defendant Kohn Pedersen Fox Associates, P.C. ("KPF"), by its attorneys, Zetlin & De Chiara, LLP, as and for its Reply to the Counterclaim (the "Counterclaim") of Third-Party Defendant Cosentini Associates, Inc. ("Cosentini"), respectfully alleges and says as follows:

1. Paragraph 46 of the Counterclaim set forth legal conclusion as to which no response is required. To the extent that a response is required, KPF denies the allegations set forth in Paragraph 46 insofar as they are alleged with respect to KPF and otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth therein.

2. Paragraph 47 of the Counterclaim set forth legal conclusion as to which no response is required. To the extent that a response is required, KPF denies the allegations set forth in Paragraph 47 insofar as they are alleged with respect to KPF and otherwise denies knowledge or information sufficient to form a belief as to the allegations set forth therein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. The Court lacks subject matter jurisdiction over this controversy.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

4. The Counterclaim fails to state a cause of action against KPF upon which relief may be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

5. The Counterclaim against KPF is barred by waiver, payment and release.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

6. Cosentini is estopped from bringing the Counterclaim against KPF.

AS AND FOR AN FIFTH AFFIRMATIVE DEFENSE

7. Whatever damages Cosentini may have sustained as alleged in the Counterclaim against KPF, all of which are denied by KPF, were caused in whole or in part by the culpable conduct of Cosentini and/or others for whose acts, omissions and/or conduct Cosentini is responsible. The amount of damages recovered, if any, shall therefore be diminished in the proportion which the culpable conduct attributable to Cosentini bears to the culpable conduct which caused these alleged damages.

AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE

8. The damages alleged in the Counterclaim against KPF were caused by the culpable conduct of some third person or persons over whom KPF neither had nor exercised control.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

9. The claims alleged in the Counterclaim against KPF are barred by the doctrines of waiver and/or laches.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

10. KPF incorporates by reference each and every of the Affirmative Defenses set forth in its Answer to Plaintiff's Complaint and realleges same as though fully set forth herein.

WHEREFORE, Defendant Kohn Pedersen Fox Associates, P.C. demands judgment,

- (a) Dismissing the Counterclaim in its entirety;
- (b) Awarding KPF its all attorneys' fees, disbursements and costs incurred in defending this Counterclaim; and
- (c) Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York
April 5, 2008

ZETLIN & DE CHIARA LLP

Attorneys for Defendant

Kohn Pedersen Fox Associates, P.C.

/s/ David Abramovitz, Esq. (DA8214)

801 Second Avenue

New York, New York 10017

(212) 682-6800